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6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 10-16090-A-7
9 CARL D. THIBODEAUX and DC No. DMM-1
10 CYNTHIA A. THIBODEAUX

11 Debtor.
12 _____/

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW
14 REGARDING MOTION OF WELLS FARGO BANK, N.A.
FOR RELIEF FROM STAY

15 A hearing was held August 24, 2010, on the motion of Wells
16 Fargo Bank, N.A. ("Wells Fargo") for relief from stay in this
17 case. Following the hearing, the debtors were given until
18 September 1, 2010, to file a declaration in support of their
19 argument that Wells Fargo had not given them credit for all
20 payments they had made. The debtors failed to file a
21 declaration, and the court now rules on the motion.

22 The debtors borrowed \$750,000 from Wells Fargo, and that
23 obligation was secured by a deed of trust on real property known
24 as 12411 Crown Crest Drive, Bakersfield, California (the
25 "Property"). The deed of trust was duly recorded. In January
26 2010, Wells Fargo filed and recorded a Notice of Default due to
27 nonpayment. According to the declaration of Lauren Annable, vice
28 president for Wells Fargo, in support of the motion, no payments

1 have been made on the note since April 2009, and the total due
2 and owing is now \$675,975.64. Wells Fargo accepted the value the
3 debtors gave to the Property in Schedule B of \$463,900.

4 In opposition to the motion, the debtors filed a declaration
5 stating that:

6 "We are the owners of the real estate located at 12411 Crown
7 Crest Drive, Bakersfield, CA 93311. We do not believe we
8 have been given credit for all payments made."

9 Bankruptcy Code § 362(g) states that the party requesting
10 relief from stay has the burden of proof on the issue of the
11 debtor's equity in the property, and the party opposing relief
12 from stay has the burden of proof on all other issues. Thus,
13 here Wells Fargo has the burden of proof on the issue of debtors'
14 equity in the Property. The parties do not disagree about the
15 value of the Property or about the fact that the obligation to
16 Wells Fargo is greater than the value of the Property subject to
17 the deed of trust securing the obligation. The only dispute is
18 the extent to which the debtors are delinquent in payments. On
19 this issue, which might be characterized as whether Wells Fargo
20 has adequate protection, the debtors have the burden of proof.

21 The debtors have failed to meet that burden of proof. The
22 declaration simply stating that debtors do not believe they have
23 been given credit for all payments made does not suffice to meet
24 their burden of proof. They have presented no evidence of what
25 payments they have made and of whether any of those payments are
26 in default. Wells Fargo, on the other hand, has come forward
27 with evidence that the debtors are delinquent in payments.

28 There is no equity in the Property. The Property is not
necessary for an effective reorganization. Wells Fargo is not

adequately protected.

For the foregoing reasons, the motion will be granted.

Wells Fargo may submit a form of order so stating.

DATED: September 16 2010



WHITNEY RIMEL, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities at the addresses shown below or on the attached list.

SEE ATTACHED LIST

DATED: 9/17/10

By: Leticia Putinowski
Deputy Clerk

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